

Application No. 10/749,368  
Response dated January 10, 2007  
Reply to Office Action of October 12, 2006

**REMARKS**

Claims 1-64 are presented for Examiner Hill's consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following arguments is respectfully requested.

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### **ARGUMENTS**

By way of the Office Action mailed October 12, 2006, claims 1-3, 5, 8-10, 13-14, 17, 19-24, 26, 29-31, 34-35, 38-47, 50-52, 55-56, and 59-61 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Application Number 2002/0072726 to Mishima et al. (hereinafter *Mishima*) in view of U.S. Patent Number 4,869,724 to Scripps (hereinafter *Scripps*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143. If one or more of the criteria are missing, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

**The combination of *Mishima* and *Scripps* does not teach or suggest all the claim limitations.**

Applicants' claims 1, 22, 43, and 64 require, in part, that

1. the front waist region (front ear portion for claims 43 and 64) includes a fastener adapted to engage into the elastic inner layer in the back waist region
2. the back waist region (back ear portion for claims 43 and 64) includes a fastener adapted to engage into the outer layer in the front waist region

*Mishima* does not teach or suggest a front waist region or a front ear portion that includes a fastener adapted to engage into the elastic inner layer in the back waist region. The Examiner states that "the outer surface of outer layer 5 in front region 20 has a

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fastener 12 located laterally outward of each longitudinal side edge and adapted to engage into the back region 22 inner liner." (OA at page 3). Applicants respectfully disagree.

Element 12 is a loop material adapted to define an engaging zone for the hook members 11. (*Mishima* at [0033]). Element 12 is not adapted to engage into the elastic inner layer in the back waist region. Therefore, *Mishima* fails to teach or suggest this claim limitation and fails to render Applicants' claims 1, 22, 43, and 64 obvious for at least this reason.

*Scripps* discloses a mechanical fastening system with a disposal means. *Scripps* also discloses a landing member 64 that is engageable with a fastening element 62. However, the landing member 64 is not adapted to engage into the elastic inner layer in the back waist region. Thus, *Scripps* does not disclose a fastener in a front waist region or a front ear portion that includes a fastener adapted to engage into the elastic inner layer in the back waist region. Therefore, *Scripps* does not cure the defects of *Mishima* discussed above and the combination of *Mishima* and *Scripps* fails to render Applicants' claims 1, 22, 43, and 64 obvious for at least this reason. The remaining rejected claims depend from these claims and are patentably distinct over the combination for at least the same reason.

Applicants respectfully request that the rejection as to these claims be withdrawn.

By way of the Office Action mailed October 12, 2006, claims 4, 6, 11, 15-16, 18, 25, 27, 32, 36-37, 48, 53, and 57-58 stand rejected under 35 U.S.C. § 103 as allegedly being obvious over *Mishima* in view of *Scripps* and further in view of U.S. Patent 4,990,147 to Freeland (hereinafter *Freeland*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, the combination of *Mishima* and *Scripps* fails to render Applicants' claims 1, 22, 43, and 64 obvious because the combination does not disclose a fastener in a front waist region or a front ear portion that is adapted to engage into the elastic inner layer in the back waist region. The addition of *Freeland* does not cure this defect.

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*Freeland* discloses a disposable absorbent article having tapes 42 disposed on the inner surface of the backsheet 14 in the back waist region. *Freeland* does not include a fastener in the front waist region adapted to engage into the elastic inner layer in the back waist region. Therefore, the addition of *Freeland* does not cure the defects of *Mishima* and *Scripps* and the combination fails to render Applicants' claims 1, 22, 43, and 64 obvious for at least this reason. The remaining rejected claims depend from these claims and are patentably distinct over the combination for at least the same reason.

Applicants respectfully request that the rejection as to these claims be withdrawn.

By way of the Office Action mailed October 12, 2006, claims 12, 33, 54, and 64 stand rejected under 35 U.S.C. § 103 as allegedly being obvious over *Mishima*, *Scripps*, *Freeland* and further in view of U.S. Patent 4,895,569 to Wilson et al. (hereinafter *Wilson*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, the combination of *Mishima*, *Scripps*, and *Freeland* fails to render Applicants' claims 1, 22, 43, and 64 obvious because the combination does not disclose a fastener in a front waist region or a front ear portion that is adapted to engage into the elastic inner layer in the back waist region. The addition of *Wilson* does not cure this defect.

The front fasteners 46 and 48 of *Wilson* are NOT adapted to engage into the inner layer in the back waist region as required by Applicants' claims. Instead, the front fasteners 46 and 48 of *Wilson* are adapted to engage complementary fasteners 42 and 44. Additionally, in *Wilson*, the inner layer 34, which is part of the absorbent structure 32, is not even close to the rear fasteners 42 and 44 as can be seen in Figure 2. Therefore, the front fasteners 46 and 48 are clearly NOT adapted to engage into the inner layer 34.

Thus, the addition of *Wilson* does not cure the defects of *Mishima*, *Scripps*, and *Freeland* and the combination fails to render Applicants' claims 1, 22, 43, and 64 obvious for at least this reason. The remaining rejected claims depend from these claims and are patentably distinct over the combination for at least the same reason.

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Applicants respectfully request that the rejection as to these claims be withdrawn.

By way of the Office Action mailed October 12, 2006, claims 7, 28, and 49 stand rejected under 35 U.S.C. § 103 as allegedly being obvious over *Mishima* and *Scripps* and further in view of U.S. Patent 5,690,627 to Clear et al. (hereinafter *Clear*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, the combination of *Mishima* and *Scripps* fails to render Applicants' claims 1, 22, 43, and 64 obvious because the combination does not disclose a fastener in a front waist region or a front ear portion that includes a fastener adapted to engage into the elastic inner layer in the back waist region. The addition of *Clear* does not cure this defect.

*Clear* discloses a fastening system 36 and a clothing attachment system 236 but does not disclose a front waist region or a front ear portion that includes a fastener adapted to engage into the elastic inner layer in the back waist region. Thus, the addition of *Clear* does not cure the defects of *Mishima* and *Scripps* and the combination fails to render Applicants' claims 1, 22, 43, and 64 obvious for at least this reason. The remaining rejected claims depend from these claims and are patentably distinct over the combination for at least the same reason.

Applicants respectfully request that the rejection as to these claims be withdrawn.

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For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at (920) 721-3016.

Respectfully submitted,

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